

# **EXHIBIT 1**

William B. Gateman

1

1

VOLUME 1

2

PAGES 251

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EXHIBITS 1-19

4

UNITED STATES DISTRICT COURT

5

DISTRICT OF MASSACHUSETTS

6

CIVIL ACTION NO. 04-11730NG

7

GEORTO, INC.

8

Plaintiff

9

v.

10

WILLIAM GATEMAN, Individually and as

11

Trustee of 200 UNION STREET REALTY TRUST

12

Defendant/Third-Party

13

Plaintiff

14

v.

15

ROBERTS CORPORATION

16

Third-Party Defendant

17

18

DEPOSITION OF: WILLIAM B. GATEMAN

19

Tuesday, August 30, 2005 10:10 a.m. to 5:05 p.m.

20

Lynch, Brewer, Hoffman & Fink, LLP

21

101 Federal Street - 22nd Floor

22

Boston, Massachusetts 02110

23

Reporter: Robert K. Maloney, RPR

24

Two Oliver Street, Boston, Massachusetts 02109

William B. Gateman

8

1 IT IS HEREBY STIPULATED AND AGREED  
2 by and among counsel for the respective parties  
3 hereto that the deponent will read and sign the  
4 deposition under the pains and penalties of perjury  
5 within thirty (30) days of receipt and that  
6 signature before a notary public and the filing of  
7 said deposition are hereby waived.

8 IT IS FURTHER STIPULATED that all  
9 objections, except as to the form of the question,  
10 and motions to strike are reserved for the time of  
11 trial.

12 MR. KERESTER: On the record. Would  
13 you swear the witness, please.  
14 Whereupon,

15 WILLIAM B. GATEMAN  
16 having been first satisfactorily identified by the  
17 production of his Massachusetts driver's license  
18 and duly sworn by the Notary Public, was examined  
19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KERESTER:

22 Q. Could you state your full name for the  
23 record.

24 A. William Brian Gateman.

William B. Gateman

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1 today?

2 A. When I was trying to sell the property.

3 Q. When was that?

4 A. It was after it was acquired.

5 Q. Did you ever print any of the photographs  
6 that you had taken other than the nine pictures  
7 that you brought today?

8 A. I am sure I did.

9 Q. Did you look for those other pictures?

10 A. Yes.

11 Q. Do you believe that those pictures are no  
12 longer in existence?

13 A. I know I don't have them.

14 Q. Do you think you may have given them to  
15 somebody else?

16 A. Yes.

17 Q. Who?

18 A. To anyone that wanted to see pictures of  
19 the property.

20 Q. Did you retain any of those pictures?

21 A. I don't have any.

22 Q. Did you at one point retain those  
23 pictures?

24 A. I don't remember.

william B. Gateman

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1 Q. Is it possible that you threw away some  
2 of those pictures?

3 A. It is possible.

4 Q. When do you think you may have done that?

5 A. I don't know.

6 Q. Did you throw away any pictures of the  
7 property after this lawsuit was filed?

8 A. No.

9 Q. Did you throw away any pictures after you  
10 received a letter from plaintiff's counsel in the  
11 spring of last year?

12 A. No.

13 Q. Did you in response to the document  
14 production requests look for any e-mails that may  
15 relate to the property?

16 A. No.

17 Q. Do you recall ever sending or receiving  
18 any e-mails about the property at any time?

19 A. Yes.

20 Q. Did you retain electronic copies of those  
21 e-mails?

22 A. No.

23 Q. Did you ever print any of the e-mails  
24 out?

William B. Gateman

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1 A. I might have.

2 Q. Did you look for printed copies of those  
3 e-mails in response to the document requests?

4 A. Whatever I had in my file is what I  
5 have.

6 Q. Did you determine whether you could  
7 locate any of those e-mails in your computer hard  
8 drive or any CDs?

9 A. I am not very good with computers. I  
10 know that when I delete an e-mail as far as I know  
11 it is gone.

12 Q. Did you ever take any handwritten notes,  
13 make any handwritten notes in connection with the  
14 property at any time?

15 A. No.

16 Q. Did you look for copies of any telephone  
17 bills that you have that would reflect any  
18 telephone calls that you may have made in  
19 connection with the property?

20 A. I don't save any telephone records.

21 Q. Is it your testimony that you have not  
22 retained any copies of any telephone bills that you  
23 ever received?

24 A. Say that again.

william B. Gateman

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1 Q. Is it your testimony that you did not  
2 retain any of the telephone bills that you ever  
3 received?

4 A. I may have retained copies.

5 Q. Did you look for any telephone bills that  
6 you may have for the time period from 2002 through  
7 2004?

8 A. Whatever I have in my files is what I  
9 have.

10 Q. But did you look for any telephone bills  
11 for that time period?

12 A. Not specifically, no.

13 MR. KERESTER: I will ask counsel to  
14 determine if there are any telephone bills for that  
15 time period and, if so, to produce them according  
16 to the request.

17 Q. Did you ever make any tape recordings of  
18 any meetings or phone conversations that related to  
19 this property in any way?

20 A. No.

21 Q. Did you look for copies of any invoices  
22 that you may have received from any contractors in  
23 connection with work done on the property?

24 A. Whatever invoices I have or whatever

William B. Gateman

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1 documents I have pertaining to the property I have  
2 given to my attorney.

3 Q. Did you look for and produce any  
4 cancelled checks that you may have made for payment  
5 in connection with services rendered at the  
6 property?

7 A. No.

8 MR. KERESTER: Jim, I would just  
9 state for the record that the document production,  
10 both the initial disclosure and the more recent  
11 production, didn't contain any invoices from  
12 Roberts or checks. I believe there were some  
13 produced in the Roberts production but I would ask  
14 Mr. Gateman to review his documents and produce any  
15 additional documents he may have in response to the  
16 request.

17 MR. ROBBINS: I will be glad to do  
18 it. I thought that invoices were in fact produced.

19 MR. KERESTER: I don't believe there  
20 were invoices from Roberts in Mr. Gateman's  
21 production. I have some other documents there were  
22 in the Roberts production, invoices produced as  
23 part of their initial disclosure, but I don't think  
24 there were any as far as Mr. Gateman's production



William B. Gateman

1 Stores and, I believe, from 1999 to 2001 from River<sup>47</sup>  
2 of Life Church.

3 Q. Since 2001 has the trust received any  
4 rent payments?

5 A. No.

6 Q. Did the trust hold title to the real  
7 property at 200 Union Street?

8 A. Yes.

9 Q. Did the trust purchase the property in or  
10 about 1996 to the best of your understanding?

11 A. Yes.

12 Q. Does the trust continue to hold title to  
13 any portion of that property?

14 A. No.

15 Q. Does the trust currently have any assets?

16 A. No.

17 Q. In your capacity as trustee have you ever  
18 received instructions from your father about what  
19 you should or shouldn't do with respect to the  
20 property that was held by the trust?

21 A. Could you repeat that.

22 Q. Were you ever directed by your father to  
23 do certain things in your capacity as the trustee?

24 A. Yes, I am sure.

William B. Gateman

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1 Q. Did your father have any role in  
2 connection with the management of the property  
3 after it was purchased?

4 A. What do you mean by role?

5 Q. What, if anything, did your father do to  
6 manage the property after it was purchased?

7 A. I don't know what you mean.

8 Q. Did your father do anything with respect  
9 to dealing with the tenants of the property?

10 A. I am sure he did.

11 Q. And as between you and your father who  
12 had the primary role in dealing with the tenants?

13 A. It was a shared role.

14 Q. Since 1996, generally what have been your  
15 responsibilities as trustee of the trust?

16 A. To collect the rent, to maintain the  
17 property, to try to sell the property, secure  
18 insurance for the property and ultimately demolish  
19 the property and sell the property.

20 Q. To your understanding is your father  
21 authorized to act on behalf of the trust?

22 A. I don't know.

23 MR. KERESTER: Counsel, we have not  
24 received a copy of any schedule of beneficial

William B. Gateman

1 interest which was requested in one of the initial<sup>50</sup>  
2 document requests for which there was no objection,  
3 so I would ask if that document can be located and  
4 produced.

5 MR. ROBBINS: Beneficial interest in  
6 what?

7 MR. KERESTER: The trust.

8 MR. ROBBINS: The 200 Union Street  
9 trust?

10 MR. KERESTER: Yes.

11 MR. ROBBINS: Actually, before today  
12 I wasn't aware there was anyone else, but I will  
13 agree to provide that.

14 Q. Mr. Gateman, when did you first become  
15 aware of the 200 Union Street property?

16 A. Before the acquisition.

17 Q. How did you become aware of it?

18 A. I used to shop there. It was a  
19 department store.

20 Q. Hoffman's?

21 A. Yes.

22 Q. At what point in time did you become  
23 aware that the property was available for purchase?

24 A. It was being auctioned.

William B. Gateman

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1 Q. Is it also fair to characterize the four  
2 other properties that you testified about earlier,  
3 the three in Revere and the fourth property in  
4 Randolph as investment properties?

5 A. Yes.

6 Q. At a later point in time did you cause  
7 the property to be sold in parcels?

8 A. Yes.

9 Q. You sold one of those parcels to Family  
10 Dollar, is that correct?

11 A. Yes.

12 Q. And the consideration paid by Family  
13 Dollar was \$375,000, is that right?

14 A. Approximately.

15 Q. And the trust sold a second parcel to the  
16 plaintiff in this litigation, Georto, Inc. for the  
17 consideration of \$300,000, correct?

18 A. And I think he paid some additional money  
19 because he delayed the closing.

20 Q. Additional money referring to the  
21 consideration for an extension on the purchase and  
22 sale agreement, is that right?

23 A. Yes.

24 Q. To whom was the third parcel sold?

William B. Gateman

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1 A. It was sold to a Lance Belostock.

2 Q. Was that sold for \$110,000?

3 A. I think so, yes.

4 Q. Was it sold sometime in the summer of  
5 2004?

6 A. Approximately.

7 Q. Is it fair to say then that the trust  
8 received \$785,000 as a result of the sale of the  
9 three parcels that comprised the property?

10 A. Approximately, yes.

11 Q. In addition, the trust had received, I  
12 believe, approximately \$250,000 on the insurance  
13 claim, is that right?

14 A. Minus attorney fees.

15 Q. Was there a contingency fee paid to the  
16 trust's counsel for that?

17 A. Yes, there was. The other defendant paid  
18 as well.

19 Q. When you say the other defendant, are you  
20 referring to the insurance agent?

21 A. Yes.

22 Q. Juliani?

23 A. Yes.

24 Q. When you say he paid, what do you mean?

William B. Gateman

1           A.    In the settlement he had to also pay a <sup>62</sup>  
2   portion.

3           Q.    In total the trust received a gross  
4   consideration of \$250,000, is that right, but some  
5   portion was then paid to your counsel as a  
6   contingency fee?

7           A.    Say that again.

8           Q.    Okay. Did American Equity and Juliani  
9   together pay the gross sum of \$250,000 as part of  
10 that settlement?

11          A.    No.

12          Q.    How much did American Equity pay?

13          A.    \$255,000.

14          Q.    And how much did Juliani pay?

15          A.    I believe approximately \$60,000.

16          Q.    With respect to the approximately  
17 \$785,000 that was paid for the sale of the three  
18 parcels of the property were those funds  
19 distributed to the holder of the beneficial  
20 interest in the trust?

21          A.    I don't know.

22          Q.    Did you ever write any checks  
23 distributing the proceeds from the sale?

24          A.    Yes.

William B. Gateman

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1 Q. To whom did you write those checks?

2 A. To other businesses that were purchased.

3 Q. Specifically to whom?

4 A. I don't recall.

5 Q. Are those other businesses in which you  
6 have an interest?

7 A. I may have an interest.

8 Q. Did you cause the entire net sale  
9 proceeds to be distributed out of the trust?

10 A. No.

11 Q. Did the trust retain any of the funds?

12 A. Yes.

13 Q. How much?

14 A. I don't remember.

15 Q. Approximately?

16 A. \$200,000, approximately.

17 Q. Are those funds currently held in a bank  
18 account in the trust's name?

19 A. I don't know what the title of the bank  
20 account is.

21 Q. But they are held in a bank account?

22 A. Yes.

23 Q. Do you know whether that bank account is  
24 in your name individually?

William B. Gateman

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1 A. I know my name is on it someplace.

2 Q. You don't know whether it is in your  
3 capacity as trustee or whether it is individually?

4 A. No, I don't know.

5 Q. With what bank are those funds held?

6 A. Banknorth.

7 Q. To the best of your recollection were the  
8 remaining proceeds other than the \$200,000  
9 distributed out of the trust?

10 A. Yes.

11 Q. When were those distributions made?

12 A. I don't know exact dates.

13 Q. Were any of those distributions made  
14 after the commencement of this lawsuit in August of  
15 2004?

16 A. Yes.

17 Q. Approximately how much was distributed  
18 after the filing of the lawsuit?

19 A. \$200,000.

20 Q. To whom were those funds distributed?

21 A. It was to purchase some stock with it.

22 Q. In those name is the stock held?

23 A. It is not held anymore. It was sold.

24 Q. At the time that the stock was held in



William B. Gateman

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1 whose name was the stock held?

2 A. I don't recall.

3 Q. Was it in your name individually?

4 A. No.

5 Q. Was it in your father's name?

6 A. I don't think so.

7 Q. Was the stock held for the benefit of you  
8 or your family?

9 A. I don't think so.

10 Q. For whose benefit was the stock held?

11 A. I think a friend of my father's.

12 Q. Who is that?

13 A. I don't remember his name.

14 Q. Who wrote the check for that  
15 approximately \$200,000?

16 A. I believe the bank did.

17 Q. Who requested the bank to issue that  
18 check?

19 A. I did.

20 Q. Have you retained copies of any bank  
21 accounts into which any of the funds from the sale  
22 of the parcels were distributed?

23 A. Yes.

24 Q. Have you also kept copies of any checks

William B. Gateman

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1 reflecting distribution of any of those funds?

2 A. No.

3 Q. Did you throw those checks away?

4 A. The account is a savings account. There  
5 was no checks with it.

6 Q. Do you have any records indicating the  
7 name of your father's friend in whose name the  
8 stock was held?

9 A. No.

10 Q. At some point was that stock sold?

11 A. I think so, yes.

12 Q. Was it your understanding that your  
13 father's friend was holding that stock for the  
14 benefit of you or your father?

15 A. Yes.

16 Q. Why?

17 A. I don't know why.

18 Q. Did you have any discussions with your  
19 father about the subject of in whose name that  
20 stock would be placed?

21 A. No.

22 Q. Did you have a discussion with anybody  
23 about in whose name the stock would be held?

24 A. No.

William B. Gateman

1 Q. How did you know to whom to have the bank <sup>67</sup>  
2 issue the funds?

3 A. I believe my father told me.

4 Q. So you did have some discussion with your  
5 father about that?

6 A. You asked me about a name.

7 Q. Okay. So your father never gave you the  
8 name of the individual in whose name the stock  
9 would be held?

10 A. He gave me the name of the brokerage  
11 account or brokerage firm.

12 Q. Did you cause the bank to make that  
13 distribution at the direction of your father?

14 A. Yes.

15 Q. Is it fair to say that during the time  
16 period from 1996 to the present that your father  
17 controls the operations of the trust?

18 A. I don't know.

19 Q. Was it your understanding that the stock  
20 would be held for the benefit of your father  
21 specifically?

22 A. I assumed so, yes.

23 Q. What is the name of the brokerage firm?

24 A. I don't recall.

William B. Gateman

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1 MR. KERESTER: Counsel, there were  
2 certain document production requests with respect  
3 to distribution made concerning the proceeds from  
4 the sale of the property and I would ask that those  
5 documents be produced.

6 MR. ROBBINS: Was it a document  
7 production request, a specific one?

8 MR. KERESTER: We can address that  
9 off the record if you would like, but I can point  
10 your attention to the particular request.

11 MR. ROBBINS: Let's go off the record  
12 so I can make some notes here.

13 (Discussion held off the record.)

14 MR. KERESTER: Back on the record.

15 Q. Mr. Gateman, I believe you have indicated  
16 that approximately \$200,000 of the net proceeds  
17 from the sale of any portion of the property has  
18 been maintained in a bank account with Banknorth  
19 that is either in your name as trustees or  
20 individually, is that correct?

21 A. That is right.

22 Q. And I believe you indicated that an  
23 additional sum of approximately \$200,000 was  
24 distributed to a brokerage firm in the name of a

William B. Gateman

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1 about why they needed to include a line item of  
2 \$25,000 for the removal of brick and foundation  
3 concrete if not acceptable to bury on site?

4 A. Ask that again.

5 Q. Did you have any discussion with Mr.  
6 Stalker and Mr. Doherty about why they had  
7 separately had a price of \$25,000 for the removal  
8 of brick and foundation concrete if not acceptable  
9 to bury on the site?

10 A. Not that I recall.

11 Q. You testified earlier that you believe  
12 that your father had spent approximately \$200,000  
13 in connection with the demolition of the property?

14 A. Approximately, yes.

15 Q. To whom did he make those payments?

16 A. To whoever did work on the site.

17 Q. Approximately how much was paid to  
18 Roberts?

19 A. Approximately a hundred thousand dollars.

20 Q. It is your understanding that either the  
21 trust or your father made payments to Roberts in  
22 the total sum of approximately \$100,000?

23 A. Yes.

24 Q. Were those payments made by check?

William B. Gateman

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1 A. I believe so.

2 Q. Were any of the payments made by cash?

3 A. They could have been.

4 Q. Who received the additional \$100,000 in  
5 connection with the demolition?

6 A. Turner received some money.

7 Q. How much were they paid?

8 A. Approximately \$10,000. Loveland  
9 Trucking.

10 Q. How much were they paid?

11 A. Approximately \$30,000.

12 Q. What services did Loveland provide?

13 A. They trucked in fill to the site.

14 Q. Anybody else?

15 A. Weatherbee Contracting, approximately  
16 \$20,000.

17 Q. What work did Weatherbee do?

18 A. They graded the site. SCS Construction,  
19 I believe, did the asbestos abatement.

20 Q. How much were they paid?

21 A. Approximately \$30,000. RIS was a few  
22 thousand dollars, maybe.

23 Q. Anybody else?

24 A. The fence company, Wood Wire Fence,

William B. Gateman

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1 approximately \$10,000. Goldman Engineering, they  
2 did the reports. I don't know how much they were  
3 paid. Maybe \$5,000. Envirotech, approximately  
4 \$15,000, maybe.

5 Q. Do you recall anyone else?

6 A. No, but I am sure there was other money  
7 that was spent.

8 Q. Was your father the source of those  
9 funds?

10 A. Yes.

11 Q. In general, did your father provide the  
12 funds that were used by the trust, for example, to  
13 purchase the property in the first instance?

14 A. Yes.

15 Q. Similarly, your father was the source of  
16 the approximately \$200,000 that was paid in  
17 connection with the demolition?

18 A. Approximately, yes.

19 Q. At some point in time did you sign a  
20 demolition permit application or a notice?

21 A. I might have signed it. I am not sure.

22 Q. Were you requested by Roberts to sign any  
23 kind of a notification in connection with the  
24 demolition work?

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1 Q. Do you have any understanding as to  
2 whether Red Baron rendered any services at the  
3 property?

4 A. I imagine that they provided some trucks.

5 Q. Did you ever receive any invoicing  
6 documents from Weatherbee?

7 A. I must have.

8 Q. Did you retain copies of those?

9 A. If you don't have them I don't have  
10 them.

11 Q. Did you enter into an agreement with  
12 Loveland to perform work at the property?

13 A. Yes.

14 Q. What did you ask them to do?

15 A. I asked them to get me fill to fill the  
16 property.

17 Q. Did you deal with Ronald Loveland?

18 A. I think it is Don.

19 Q. Don Loveland?

20 A. Yes.

21 Q. How did you first learn of Loveland?

22 A. I knew him from a neighbor in town.

23 Q. Is he in fact a resident of Swampscott?

24 A. I don't know where he lives.



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1 Q. What did you ask Mr. Loveland  
2 specifically to do?

3 A. Actually, he came to me and told me that  
4 he had some fill that was available for free and  
5 all I had to do was to pay the trucking costs.

6 Q. Did you enter into any kind of agreement  
7 with him, written agreement?

8 A. No, probably not.

9 Q. Did you make any payment to Loveland?

10 A. Yes.

11 Q. How much?

12 A. Approximately \$30,000.

13 Q. It was your understanding that you were  
14 paying for the cost of the trucking, correct?

15 A. Yes.

16 Q. Where did the fill come from?

17 A. Most of it came from a site in Revere.

18 Q. What site?

19 A. You have the documentation. I don't know  
20 offhand what the site is.

21 Q. You are aware of some documentation that  
22 has been produced in this litigation that  
23 identifies where it came from?

24 A. Yes.

William B. Gateman

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1 Q. What documents are those?

2 A. It's a document that says where the fill  
3 was from and what it contained.

4 MR. KERESTER: Off the record for a  
5 moment.

6 (Discussion held off the record.)

7 MR. KERESTER: Back on the record.  
8 Counsel had a discussion off the record regarding  
9 the document that the witness was referring to and  
10 I have indicated to Mr. Robbins that I don't  
11 believe I received a copy of that document and I  
12 would ask that it be produced.

13 Q. Mr. Gateman, while we were off the record  
14 you described that document. Could you just state  
15 that on the record?

16 A. Sure. The fill was from someplace in  
17 Revere called something Heights where they were  
18 building a development and they had a lot of excess  
19 fill, virgin fill, and there was a letter attesting  
20 to what the material was.

21 MR. KERESTER: I would ask counsel  
22 for that to be produced.

23 MR. ROBBINS: That's not a problem.

24 Q. It is your understanding that you were

William B. Gateman

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1 provided with a copy of this letter at some point  
2 in time?

3 A. Yes.

4 Q. By whom?

5 A. By the owner of the property.

6 Q. Is it your understanding that fill  
7 typically is free?

8 A. No.

9 Q. Do you have any understanding as to why  
10 this fill was free?

11 A. My understanding, which might be wrong,  
12 is that whoever has it and wants to get rid of it  
13 has to just get rid of it.

14 Q. Did you ever go to Revere and inspect the  
15 material before it was brought to your site?

16 A. I didn't, but Family Dollar did.

17 Q. Who from Family Dollar went there?

18 A. Their engineering firm.

19 Q. Who was that?

20 A. I am not sure of the name.

21 Q. Did you have any personal knowledge as  
22 what material was transported from Revere to your  
23 site in Lynn?

24 A. I was there every day.

William B. Gateman

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1 to Georto?

2 A. Yes.

3 Q. Did you also sign a trustee's certificate  
4 stating that you had been authorized by the  
5 beneficiaries of the trust to sign any and all  
6 documents in connection with the sale?

7 A. I don't know.

8 MR. KERESTER: Let's mark this as  
9 Exhibit Number 13.

10 (The document was marked Deposition  
11 Ex. No. 13.)

12 Q. Can you identify Exhibit Number 13?

13 A. Yes.

14 Q. Does that document contain your  
15 signature?

16 A. Yes.

17 Q. Had you in fact been authorized by the  
18 beneficiaries of the trust to sign any and all  
19 documents related to the sale of the property?

20 A. Yes.

21 Q. Did you receive that authorization from  
22 your father?

23 A. Probably not.

24 Q. Do you know who the beneficiaries are

William B. Gateman

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1 that are referenced in this exhibit?

2 A. I don't.

3 Q. Do you know today who the beneficiaries  
4 of the trust are?

5 A. No, I don't.

6 Q. How do you know that you received  
7 authorization if you don't know who the  
8 beneficiaries are?

9 A. Repeat your question.

10 Q. How do you know that you received the  
11 authorization of the beneficiaries if you don't  
12 know who the beneficiaries are?

13 A. I don't know how.

14 MR. KERESTER: I would like to mark  
15 next as Exhibit Number 14 this document entitled  
16 Indemnification Agreement.

17 (The document was marked Deposition  
18 Ex. No. 14.)

19 Q. Can you identify Exhibit Number 14?

20 A. Indemnification Agreement.

21 Q. Does that document contain your  
22 signature?

23 A. Yes.

24 Q. Is it your understanding that this

William B. Gateman

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## E R R A T A S H E E T

I, WILLIAM B. GATEMAN, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction
------	------	------------

<u>69</u>	<u>18, 19</u>	<u>THE PAYMENT WAS MADE BY THE TRUS</u>
_____	_____	_____
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_____	_____	_____

Signed under the pains and penalties of perjury  
this 12 day of Oct, 2005.

  
WILLIAM B. GATEMAN

William B. Gateman

251

1 COMMONWEALTH OF MASSACHUSETTS)

2 ) ss.

3 COUNTY OF SUFFOLK )

4 I, Robert K. Maloney, Registered  
5 Professional Reporter and Notary Public duly  
6 commissioned and qualified in and for the  
7 Commonwealth of Massachusetts, do hereby certify  
8 that there came before me on Tuesday, August 30,  
9 2005, at 10:10 o'clock a.m., the person  
10 hereinbefore named, who was by me duly sworn, that  
11 he was thereupon examined upon his oath, and his  
12 examination was taken by me stenographically, and  
13 that the deposition is a true record of the  
14 testimony given by the witness.

15 I further certify that I am neither  
16 attorney, counsel nor relative of any of the  
17 parties to the action or financially interested in  
18 the action.

19 I have hereunto set my hand and affixed  
20 my seal this 13th day of September, 2005.

21 Robert K. Maloney

22 ROBERT K. MALONEY, Notary Public

23 My Commission expires January 10, 2008  
24

## **EXHIBIT 2**



12/24/96 02:44 Inst 371

BK 13905 PG 472

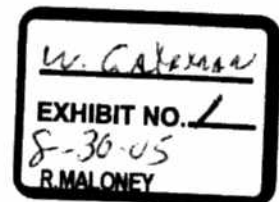
DECLARATION OF TRUST  
ESTABLISHING  
200 UNION STREET REALTY TRUST

I, William Gateman, of Swampscott, Essex County, Massachusetts, do hereby declare that I and my successor(s) in trust hereunder will hold any and all Trust Property that has been or hereafter may be acquired by or conveyed or transferred to me or to my successor(s), as Trustee(s) hereunder, IN TRUST, for the sole benefit of the Beneficiaries hereunder, from time-to-time, upon the terms, conditions, and provisions and subject to the limitations hereof:

1. Trustees and Beneficiaries. The term "Trustee", as used herein, shall mean the person or persons who, from time-to-time, shall be serving as Trustee or Trustees hereunder; and all of the rights, powers, authorities, privileges, and immunities provided for hereunder for the Trustee may be exercised by such person or by each and every person, if more than one (1), who shall appear, from the records of the Essex South County Registry of Deeds in which this Trust shall be recorded, to be the Trustee at such time. If more than one (1) person shall be serving as Trustee hereunder, the Trustees shall exercise the powers granted to them solely by unanimous action. The term "Registry of Deeds", as used herein, shall mean the Essex South County Registry of Deeds.

The Beneficiaries of this Trust are the persons listed as the Beneficiaries in the Schedule of Beneficiaries, as of this day executed by them and the Trustee, and filed with the Trustee as a part of the records of this Trust, and their successors and assigns as herein provided for. The beneficial interests of the

c/o Stuart Seychen, 1 Beacon Street  
 Suite 1100 Boston 02108



EK 13905 PG 473

Beneficiaries are as now or hereafter may be set forth on said Schedule of Beneficiaries, which shall be amended, from time-to-time, to reflect any change in the identity of the Beneficiaries or in their respective interests hereunder. Any Beneficiary may serve as a Trustee, but no Trustee need be a Beneficiary.

2. Name of Trust. The name of the Trust shall be the 200 Union Street Realty Trust.

3. Trustee's Powers. Except as hereinafter provided, the Trustee shall have no power or authority to deal in or with the property held hereunder unless the Trustee shall have first received directions in writing from the Beneficiary or Beneficiaries and, upon the receipt of such directions, as and to the extent specifically contained therein, the Trustee shall have full power and authority to: sell, convey, assign, mortgage, or otherwise dispose of all or any part of the Trust Property; execute and deliver leases and subleases, notwithstanding that the term of said leases or subleases may extend beyond the date of the possible termination of this Trust; borrow money and execute and deliver notes, mortgages or other evidence of such borrowing of money, for a period extending beyond the date of any possible termination of this Trust; lend money and receive notes or other evidence of such lending of money, for a period extending beyond the date of any possible termination of this Trust; grant or acquire rights or easements; construct, alter, add to, or demolish any real estate constituting a part of the Trust Property; and, generally, to enter into agreements,

BK 13905 PG 474

contracts, or arrangements with respect to the Trust Property, all as so directed, but not otherwise. No Trustee, however, shall be required to take any action, as so directed, which, in the opinion of such Trustee, will involve him in any personal liability unless he shall be first indemnified to his satisfaction.

4. Trustee's Certificate. No person dealing with the Trustee hereunder shall be under any obligation or liability to see to the application of any purchase money or to any other money or property lent or delivered or transferred to the Trustee or to see that the terms and conditions of this Trust have been complied with. Any person dealing with the Trust Property or with any Trustee may rely fully, and without further inquiry, on a certificate, which must be signed and acknowledged by each and every person appearing from the records of the Registry of Deeds to be a Trustee hereunder, as to who is the Trustee or who are the Trustees or the Beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or non-existence of any fact or facts which constitute or may constitute conditions precedent to any acts or action by the Trustee, or which are, in any other manner, germane to the affairs of this Trust, including, without limitation, the fact of whether or not directions authorizing the Trustee to so act, as provided in Article Three (3) herein, have been given by the Beneficiary or Beneficiaries.

5. Termination of Trust. This Trust may be terminated at any time by delivery to the Trustee of a notice of termination,

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signed and acknowledged by the holder(s) of not less than fifty-one (51%) percent of the beneficial interests in this Trust. Upon delivery of such notice of termination, the Trustee shall acknowledge receipt of the same and a Certificate of Termination, signed and acknowledged by each and every person appearing from the records of the Registry of Deeds to be a Trustee hereunder, shall be recorded in the Registry of Deeds, and this Trust shall thereupon be terminated as hereinafter set forth; and provided, however, that in the event of the death of any Beneficiary, the surviving Beneficiary or Beneficiaries and the successor in interest of a deceased Beneficiary may unanimously agree to continue this Trust, in which event no such notice of termination shall be delivered to the Trustee. Notwithstanding any of the foregoing provisions of this Article Five (5), this Trust shall terminate twenty (20) years from the date hereof. In case of termination of this Trust, either by expiration of time or otherwise, the Trustee shall thereupon transfer and convey, by proper deeds or other instruments, in writing, the specific assets constituting the Trust Property, subject to any leases, mortgages, contracts, or other liens or encumbrances on the Trust Property, to the Beneficiaries, as tenants-in-common, in proportion to their respective beneficial interests. All such deeds or other instruments shall refer to this Trust and shall be accompanied by a certificate, signed and acknowledged by the Trustee, that the grantees or transferees named in such deeds or other instruments are the Beneficiaries

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and that the beneficial interests of the respective Beneficiaries are as set forth in said deeds or other instruments.

6. Resignation of Trustee. Any Trustee hereunder may resign by a written instrument, signed and acknowledged by such resigning Trustee, which shall be recorded in the Registry of Deeds.

7. Successor Trustee. Succeeding or additional Trustees may be appointed, and any trustee may be removed, by a written instrument, signed and acknowledged by the holder(s) of not less than fifty-one (51%) percent of the beneficial interests in this Trust; provided, however, that, in each such case, a certificate signed and acknowledged by each and every person appearing from the records of the Registry of Deeds to be a Trustee hereunder, naming the Trustee or Trustees appointed or removed and, in the case of any appointment, the acceptance in writing by any Trustee or Trustees so appointed, shall be recorded in the Registry of Deeds. Upon the appointment of any succeeding or additional Trustee, title to the Trust Property shall thereupon, without necessity of any instrument of conveyance or transfer, be vested in such succeeding or additional Trustee jointly with the remaining Trustee, if any. Each succeeding or additional Trustee shall have all of the rights, powers, authorities, privileges, and immunities as the original Trustee hereunder. No Trustee shall be required to furnish any bond.

8. Transfer of Beneficial Interest. Other than by operation of law, including the laws of descent and distribution, no Beneficiary shall have the right to transfer his beneficial

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interest in this Trust, or any portion thereof, without the prior written consent of all of the other Beneficiaries. In the event that any Beneficiary wishes to transfer his beneficial interest in this Trust, he shall so notify the other Beneficiaries, by notice in writing. Within thirty (30) days of receipt of such notice, each Beneficiary who consents to the proposed transfer shall notify the transferring Beneficiary of his consent in writing. In the event that all of the Beneficiaries do not so notify the transferring Beneficiary, it is agreed that this Trust will be terminated, and the Beneficiaries shall deliver a notice of termination to the Trustee, signed and acknowledged by the holder(s) of not less than fifty-one (51%) percent of the beneficial interests in this Trust, directing the Trustee to sign, acknowledge, and record a Certificate of Termination in the Registry of Deeds, and this trust shall be terminated in accordance with Article Five (5) herein.

9. Amendments. This Trust may be amended, from time-to-time, by an instrument in writing, signed and acknowledged by the holder(s) of not less than fifty-one (51%) percent of the beneficial interests in this Trust. The Trustees shall then sign, acknowledge, and record said amendment or a Certificate of Amendment in the Registry of Deeds.

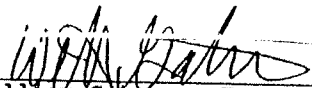
10. Liability of Trustee to Beneficiaries. No Trustee hereunder shall be liable for any error of judgment or for any loss arising out of any act or omission to act in good faith or for any act of any co-Trustee or preceding Trustee or Trustees, but he shall be responsible only for his own willful breach of

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trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustee.

11. Reliance on Legal Documents. Every agreement, lease, sublease, deed, mortgage, note, or other instrument executed by the Trustee or, if more than one (1), by each and every person appearing from the records of the Registry of Deeds to be a Trustee hereunder, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that, at the time of the delivery of such instrument, this Trust was in full force and effect and that the execution and delivery thereof was duly directed by the Beneficiary or Beneficiaries, pursuant to the provisions of this Trust.

EXECUTED as a sealed instrument this 18th day of December, 1996

  
\_\_\_\_\_  
William Gateman, Trustee  
as aforesaid, and not  
individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 18, 1996

Then personally appeared the above-named William Gateman, Trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 4-22-99

## **EXHIBIT 3**



AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

United States District Court

DISTRICT OF

Massachusetts

Georto, Inc.

V.

**SUBPOENA IN A CIVIL CASE**

William Gateman, Individually and as Trustee  
of 200 Union Street Realty Trust

Case Number:<sup>1</sup> 04-11730 NG

TO: Jackson D. Gateman  
3 Tip Top Road, Swampscott, Massachusetts 01907

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Lynch, Brewer, Hoffman & Fink, LLP  
101 Federal Street, Boston, Massachusetts 02110

DATE AND TIME

9/26/2005 10:00 am

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule "A" attached hereto.

PLACE

Lynch, Brewer, Hoffman & Fink, LLP  
101 Federal Street, Boston, Massachusetts 02110

DATE AND TIME

9/26/2005 10:00 am

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

9/20/2005

Dale Kerester, Esq. Lynch, Brewer, Hoffman & Fink LLP, 101 Federal Street, Boston, MA 02110 (617) 951-0800  
(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

## Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the mmmdemanding party to contest the claim.

**SCHEDULE "A"**

**DEFINITIONS AND INSTRUCTIONS**

The following definitions and instructions shall apply:

1. The term "Georto" shall mean Plaintiff Georto, Inc.
2. The term "Gateman" shall mean Defendant and Third-Party Plaintiff William Gateman, individually and/or as Trustee of 200 Union Street Realty Trust.
3. The term "Roberts" shall mean Third-Party Defendant Roberts Corporation.
4. The terms "plaintiff," "defendant," and "third-party defendant" as well as a party's full or abbreviated name or a pronoun referring to a party shall mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, trustees, beneficiaries, and attorneys.
5. The term "Property" shall mean the property which is the subject of this action and which is located in Lynn, Essex County, Massachusetts and consisting of approximately 19,500 square feet located between Ellis Street and Union Street and being that property fronting approximately 83 feet on Union Street and approximately 80 feet on Ellis Street.

**REQUESTS**

1. Any and all documents evidencing or constituting schedule(s) of beneficial interests with respect to the 200 Union Street Realty Trust.
2. Any and all documents concerning ownership of beneficial interests in the 200 Union Street Realty Trust and/or the issuance of distributions or disbursements by such trust, specifically including but not limited to distribution or disbursement of the proceeds from the sale of any portion of the property located at 190-200 Union Street, Lynn, Massachusetts (including the sales to Family Dollar, Georto, and Lance Belostock) and/or the settlement of any insurance claims and/or litigation regarding such property. This request specifically requires the production of checks, bank statements, account statements, and documents regarding the

purchase and/or sale of stock or real property with the proceeds from the sale of any portion of the property or of the insurance settlement.

3. Any and all documents evidencing directions provided by you to the trustee of the 200 Union Street Realty Trust after August 2001, pursuant to paragraph 3 of the Declaration of Trust Establishing 200 Union Street Realty Trust.

4. Any and all photographs of any portion of the property located at 190-200 Union Street, Lynn, Massachusetts, taken after August, 2001.

5. Any and all documents concerning the sale of the Property by Gateman to Georto.

6. Any and all documents concerning the sale of real property by Gateman to Family Dollar Stores of Massachusetts, Inc..

7. Any and all documents concerning the environmental condition of the Property.

8. Any and all documents concerning demolition debris or solid waste located on the property located at 190-200 Union Street, Lynn, Massachusetts at any time after August 2001.

9. Any and all documents concerning payments for removal of demolition debris and/or solid waste from the Property and/or for filling or grading activity at the Property.

10. Any and all documents concerning communications with Roberts Demolition, Scott Wetherbee Contracting, Loveland Trucking, Red Baron Trucking, the City of Lynn, and/or the Massachusetts Department of Environmental Protection regarding the property located at 190-200 Union Street, Lynn, Massachusetts.

<b>RECEIVED BY SERVER</b>	<b>DATE</b> September 20, 2005	<b>PLACE</b> Boston, Massachusetts
<b>SERVED</b>	<b>DATE</b> September 21, 2005	<b>PLACE</b> 3 TIP TOP ROAD, SWAMPSCOTT, Massachusetts
<b>SERVED ON (NAME)</b>  JACKSON D. GATEMAN		<b>FEES TENDERED</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ 47.00 <input checked="" type="checkbox"/> Advanced By Attorney
<b>SERVED BY</b>  JOHN MILANO		<b>TITLE</b>  Process Server and a Disinterested Person

**STATEMENT OF SERVICE FEES**

<b>SERVICE FEE</b>  \$ 40.00	<b>TOTAL</b>  \$ 40.00
------------------------------------	------------------------------

**DECLARATION OF SERVER (4)**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on September 21, 2005 John Milano  
 Date Signature of Server  
 One Devonshire Place, Boston, Massachusetts  
 Address of Server

**ADDITIONAL INFORMATION**

PLEASE NOTE THAT IT WAS NECESSARY TO MAKE \_\_\_\_\_ ATTEMPTS BEFORE MAKING PROPER SERVICE.

Date	Time	Remarks	FEE
			\$ _____
			\$ _____
			\$ _____
			\$ _____
			\$ _____
			\$ _____
			\$ _____
<b>TOTAL</b>			<b>\$ _____</b>

(3) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, of Rule 45(c), Federal Rules of Civil Procedure.  
 (4) Fees and mileage need not be tendered to the deponent upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)

## **EXHIBIT 4**

FD-2088 (Rev. 1/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

United States District Court

DISTRICT OF

Massachusetts

Georto, Inc.

V.

**SUBPOENA IN A CIVIL CASE**

William Gateman, Individually and as Trustee  
of 200 Union Street Realty Trust

Case Number:<sup>1</sup>

TO: Jackson D. Gateman, 3 Tip Top Road, Swampscott,  
Massachusetts 01970

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Lynch, Brewer, Hoffman & Fink, LLP, 101 Federal Street, Boston, MA  
02110

DATE AND TIME

11/30/2005 2:00 pm

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Schedule "A" attached hereto

PLACE

Lynch, Brewer, Hoffman & Fink, LLP, 101 Federal Street, Boston, MA 02110

DATE AND TIME

11/30/2005 2:00 pm

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

11/11/2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Dale C. Kerester, Esquire, Lynch, Brewer, Hoffman & Fink, LLP, 101 Federal Street, 22nd Floor, Boston, MA 02110  
(617) 951-0800

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

---

**PROOF OF SERVICE**


---

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

---

**DECLARATION OF SERVER**


---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

---

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:**


---

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



## **SCHEDULE "A"**

### **DEFINITIONS AND INSTRUCTIONS**

The following definitions and instructions shall apply:

1. The term "Georto" shall mean Plaintiff Georto, Inc.
2. The term "Gateman" shall mean Defendant and Third-Party Plaintiff William Gateman, individually and/or as Trustee of 200 Union Street Realty Trust.
3. The term "Roberts" shall mean Third-Party Defendant Roberts Corporation.
4. The terms "plaintiff," "defendant," and "third-party defendant" as well as a party's full or abbreviated name or a pronoun referring to a party shall mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, trustees, beneficiaries, and attorneys.
5. The term "Property" shall mean the property which is the subject of this action and which is located in Lynn, Essex County, Massachusetts and consisting of approximately 19,500 square feet located between Ellis Street and Union Street and being that property fronting approximately 83 feet on Union Street and approximately 80 feet on Ellis Street.

### **REQUESTS**

1. Any and all documents evidencing or constituting schedule(s) of beneficial interests with respect to the 200 Union Street Realty Trust.
2. Any and all documents concerning ownership of beneficial interests in the 200 Union Street Realty Trust and/or the issuance of distributions or disbursements by such trust, specifically including but not limited to distribution or disbursement of the proceeds from the sale of any portion of the property located at 190-200 Union Street, Lynn, Massachusetts (including the sales to Family Dollar, Georto, and Lance Belostock) and/or the settlement of any insurance claims and/or litigation regarding such property. This request specifically requires the production of checks, bank statements, account statements, and documents regarding the

purchase and/or sale of stock or real property with the proceeds from the sale of any portion of the property or of the insurance settlement.

3. Any and all documents evidencing directions provided by you to the trustee of the 200 Union Street Realty Trust after August 2001, pursuant to paragraph 3 of the Declaration of Trust Establishing 200 Union Street Realty Trust.

4. Any and all photographs of any portion of the property located at 190-200 Union Street, Lynn, Massachusetts, taken after August, 2001.

5. Any and all documents concerning the sale of the Property by Gateman to Georto.

6. Any and all documents concerning the sale of real property by Gateman to Family Dollar Stores of Massachusetts, Inc..

7. Any and all documents concerning the environmental condition of the Property.

8. Any and all documents concerning demolition debris or solid waste located on the property located at 190-200 Union Street, Lynn, Massachusetts at any time after August 2001.

9. Any and all documents concerning payments for removal of demolition debris and/or solid waste from the Property and/or for filling or grading activity at the Property.

10. Any and all documents concerning communications with Roberts Demolition, Scott Wetherbee Contracting, Loveland Trucking, Red Baron Trucking, the City of Lynn, and/or the Massachusetts Department of Environmental Protection regarding the property located at 190-200 Union Street, Lynn, Massachusetts.

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## **EXHIBIT 5**

Scott Wetherbee

1

1 VOLUME 1 of 1  
2 PAGES 125  
3 EXHIBITS 38-42

4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF MASSACHUSETTS  
6 CIVIL ACTION NO. 04-11730NG  
7 GEORTO, INC.

8 Plaintiff

9 v.

10 WILLIAM GATEMAN, Individually and as  
11 Trustee of 200 UNION STREET REALTY TRUST

12 Defendant/Third-Party  
13 Plaintiff

14 v.

15 ROBERTS CORPORATION

16 Third-Party Defendant

17 -----  
18 30(b)(6) DEPOSITION OF: SCOTT WETHERBEE  
19 CONTRACTING (Scott Wetherbee, designee)  
20 September 29, 2005 - 10:05 a.m. to 1:00 p.m.

21 Lynch, Brewer, Hoffman & Fink, LLP  
22 101 Federal Street - 22nd Floor, Boston, MA

23 Reporter: Robert K. Maloney, RPR  
24 Two Oliver Street, Boston, Massachusetts 02109

Scott Wetherbee

1 MR. KERESTER: On the record. Would<sup>7</sup>  
2 you swear the witness, please.

3 Whereupon,

4 SCOTT WETHERBEE  
5 having been first satisfactorily identified by the  
6 production of his Massachusetts driver's license  
7 and duly sworn by the Notary Public, was examined  
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KERESTER:

11 Q. Mr. Wetherbee, my name is Dale Kerester  
12 and I represent the plaintiff in this matter,  
13 Georto, Inc. I am the attorney who issued the  
14 subpoena that brought you here today.

15 I am going to be asking you a series  
16 of questions today. If at any point you don't  
17 understand one of my questions please let me know  
18 and I will rephrase it for you. Do you understand  
19 that instruction?

20 A. Yes.

21 Q. You will also need to respond in an oral  
22 fashion for the stenographer. The stenographer  
23 generally cannot record nods of the head and so  
24 forth and so you will have to verbalize your

Scott Wetherbee

8

1 responses. Similarly, I will try not to talk over  
2 any of your answers and would also ask that you let  
3 me finish my questions and we will have a clearer  
4 record when we are finished.

5 Could you please state your name for  
6 the record.

7 A. Scott Wetherbee.

8 Q. Where do you reside, Mr. Wetherbee?

9 A. 3 Robin Road, North Reading.

10 Q. Do you have any plans to move from that  
11 address in the near future?

12 A. No.

13 Q. Could you tell us what your educational  
14 background is?

15 A. High school.

16 Q. Did you graduate from high school?

17 A. Yes.

18 Q. When was that?

19 A. 1971.

20 Q. Since graduating from high school what  
21 has your employment been?

22 A. Construction.

23 Q. Could you identify for whom you have  
24 worked generally since you graduated from high

Scott Wetherbee

12  
1 MR. KERESTER: This document I will  
2 represent to you is a copy of the subpoena that was  
3 issued to you today. I would like to have that  
4 marked as Exhibit Number 38.

5 (The document was marked Deposition  
6 Ex. No. 38.)

7 Q. Mr. Wetherbee, let me show you the  
8 document that has now been marked as Exhibit Number  
9 38 which appears to be a copy of the subpoena. Did  
10 you receive the subpoena that caused you to appear  
11 here and testify today?

12 A. Yes.

13 Q. All right. Let me turn your attention to  
14 Schedule "A" of the subpoena. Did you undertake  
15 any effort to look for documents that were  
16 requested in Schedule "A" of the subpoena?

17 A. Yes.

18 Q. Did find any such documents?

19 A. No.

20 Q. Did you ever have in your possession, or  
21 control any documents that would have been  
22 responsive to the requests in Schedule "A"?

23 A. Yes.

24 Q. At what time did you have those



Scott Wetherbee

13

1 documents?

2 A. I really don't recall.

3 Q. What type of documents did you once have?

4 A. It would just be the invoice for rental,  
5 for the work that I did at the property.

6 Q. Was that an invoice that you received and  
7 then paid or was it an invoice that you issued?

8 A. That I issued.

9 Q. Was that an invoice issued to Mr.  
10 Gateman?

11 A. Correct.

12 Q. Do you recall what that invoice was for?

13 A. That invoice was for services rendered,  
14 rental work. He rented a bulldozer with an  
15 operator.

16 Q. Did that invoice include charges for the  
17 rental of the bulldozer itself?

18 A. Yes.

19 Q. And did it also include separate charges  
20 for labor?

21 A. No.

22 Q. Do you recall approximately what the  
23 amount of the invoice was?

24 A. I would say it was probably around \$8500

Scott Wetherbee

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1 to \$10,000.

2 Q. What period of time did that rental  
3 cover?

4 A. It was probably about three to four  
5 weeks.

6 Q. Was it one piece of equipment?

7 A. Yes.

8 Q. Did you ever invoice Mr. Gateman for any  
9 other work or rental charges other than that single  
10 invoice?

11 A. No, not to my knowledge.

12 Q. Do you know what you did with that  
13 invoice?

14 A. It was in my computer and it was lost.  
15 We couldn't bring it up.

16 Q. When did you last look for that?

17 A. Well, it has been lost for probably quite  
18 a while. We lost a lot of our information. I  
19 don't know.

20 MR. KERESTER: Jim, let me just state  
21 on the record that I don't believe that Mr. Gateman  
22 has produced a copy of that invoice. If you could  
23 make inquiry about that and then produce that  
24 invoice, which is in one of the requests. I would

Scott Wetherbee

15

1 also the stenographer just to note in the record  
2 when I am asking for production of documents.

3 MR. ROBBINS: Off the record for a  
4 moment.

5 (Discussion held off the record.)

6 MR. KERESTER: Back on the record.

7 Q. Mr. Wetherbee, did you give a copy of  
8 invoice to Mr. Gateman?

9 A. Yes.

10 Q. Did you receive payment in response to  
11 that invoice?

12 A. Yes.

13 Q. Were you paid by check?

14 A. No.

15 Q. You were paid in cash?

16 A. Yes.

17 Q. Do you recall when you gave that invoice  
18 to Mr. Gateman?

19 A. No.

20 Q. Other than that invoice did you at any  
21 point in time have in your possession any documents  
22 that were responsive to the requests set forth in  
23 Schedule "A" of the subpoena?

24 A. No.

Scott Wetherbee

16

1 Q. Did you ever receive any documents from  
2 Red Baron or Loveland Trucking including any  
3 trucking slips or similar documents?

4 A. I don't recall.

5 Q. Is it possible that you may have?

6 A. I might have, yes. Maybe there were  
7 rental slips at the end of the day. I just don't  
8 remember if I did or not.

9 Q. Do you recall whether you had ever  
10 received any documents from any other party that  
11 may have performed services at the property located  
12 at 190-200 Union Street in Lynn?

13 A. No.

14 Q. Did you ever take any photographs of the  
15 property?

16 A. I might have.

17 Q. Did you keep those pictures?

18 A. No.

19 Q. Were those digital pictures?

20 A. No.

21 Q. Approximately how many pictures did you  
22 take?

23 A. I don't recall.

24 Q. Would it have been less than ten?

Scott Wetherbee

17

1 A. Yes.

2 Q. When did you take those pictures?

3 A. Sometime during the operation. I don't  
4 recall the date.

5 Q. Did you take those pictures before such  
6 time as you performed any services at the property?

7 A. No.

8 Q. Did you take those pictures during the  
9 time period in which your company performed  
10 services at the property?

11 A. Yes. I think the pictures just reflected  
12 a picture of my equipment being there.

13 Q. Where are those pictures now?

14 A. I don't know.

15 Q. Did you throw them away at some point?

16 A. I would assume so.

17 Q. Did you throw those pictures away  
18 sometime in the last year?

19 A. No, before.

20 Q. Do you know whether you threw those  
21 pictures away before August of 2004?

22 A. I just haven't seen them. I would say I  
23 haven't seen them for years. So, yes, it would be.

24 Q. Did you look for the pictures in response

Scott Wetherbee

18

1 to the subpoena?

2 A. Yes.

3 Q. For what purpose did you take the  
4 pictures?

5 A. Just to take a picture of my equipment  
6 being on the site.

7 Q. Was there more than one photo taken?

8 A. I don't know. A couple, maybe.

9 Q. Did the pictures reflect any demolition  
10 debris on the property?

11 A. Not that I recall.

12 Q. Did you keep any time slips or other  
13 records of the amount of time that you or other  
14 employees of Wetherbee Contracting performed  
15 services at the property?

16 A. No.

17 Q. Did you enter into any kind of a written  
18 agreement with Mr. Gateman in connection with the  
19 performance of services at the property?

20 A. No.

21 Q. Did Mr. Gateman ever provide you with any  
22 documents regarding the property in Lynn?

23 A. No.

24 Q. Let me direct your attention to Addendum

Scott Wetherbee

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1 COMMONWEALTH OF MASSACHUSETTS)

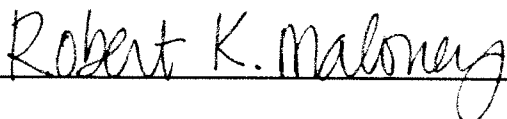

2 ) ss.

3 COUNTY OF SUFFOLK )

4 I, Robert K. Maloney, Registered  
5 Professional Reporter and Notary Public duly  
6 commissioned and qualified in and for the  
7 Commonwealth of Massachusetts, do hereby certify  
8 that there came before me on Thursday, September  
9 29, 2005, at 10:05 o'clock a.m., the person  
10 hereinbefore named, who was by me duly sworn, that  
11 he was thereupon examined upon his oath, and his  
12 examination was taken by me stenographically, and  
13 that the deposition is a true record of the  
14 testimony given by the witness.

15 I further certify that I am neither  
16 attorney, counsel nor relative of any of the  
17 parties to the action or financially interested in  
18 the action.

19 I have hereunto set my hand and affixed  
20 my seal this 12th day of October, 2005.

21  
22  

23 ROBERT K. MALONEY, Notary Public

24 My Commission expires January 10, 2008